

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 – UNIT 6 – EMPLOYMENT LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2022 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Overall, the performance of the paper was similar to that of previous years. The standard of the paper was reasonably high. A broad range of results were achieved with candidates performing well.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Generally, this was answered well. Rather than identify the different sources some candidates merely listed a variety of Acts. Credit was given for EU law.

Question 2

This question was answered well by most candidates.

Question 3

Most candidates identified two particulars, but the question asked for those that did not need to be contained in the S1 statement but must be specified in other documents.

Question 4

This was mostly answered well.

Question 5

Most candidates were able to identify some of the exceptions and some candidates did well and identified 3. Some candidates were not familiar with Schedule 9.

Question 6

This was answered well.

Question 7

There was a mixed response to this question. It was important that the candidates discuss the consequences of a repudiatory breach.

Question 8

There was a variety of responses to this question, however, the focus of this question was on the compensatory award and not general damages. Credit is given for an explanation of the compensatory award only.

Question 9

Overall, this question was answered well. Some candidates were not able to define this particular characteristic.

Question 10

Again, this question was answered well but with some candidates not able to define what is meant by -self-employed.

Section B**Scenario 1****Question 1(a)**

This question was answered reasonably well.

(b)

This part of the question required the points raised in part a to be applied to the facts of the scenario overall, most candidates were able to do this.

Question 2

Most candidates clearly knew the definition of disability but did not always apply that definition to the facts in this scenario. Most recognised it was long term, but little emphasis was placed as to whether there was a substantial effect on her day-to-day activities.

Question 3(a)

Most candidates provided a reasonable response here.

(b)

Most candidates were able to identify some of the factors.

(c)

This was generally answered well.

Question 4

Most candidates were able to explain the procedure.

Scenario 2**Question 1**

This is a standard question. Some candidates are still listing the key indicators but not stating whether they relate to self-employed or employee status. It is essential that the indicators are linked correctly.

Question 2

This question was answered well.

Question 3

Some candidates did not apply the criteria to the facts of the scenario as required by the question. Those that did apply the criteria achieved high marks.

Question 4(a)

This question focused on the requirements for adequate investigation. Most candidates responded well to this question and cited the correct case law and applied it well.

(b)

Although this question was answered reasonably well it is also important to use the correct terminology such as unauthorised absence rather than just absence.

Question 5(a)

Generally, this question was answered well.

5(b)

Most candidate were able to explain the key points for substantive fairness. Unfortunately, some discussed procedural fairness.

Scenario 3**Question 1**

This was answered well.

Question 2(a)

Most candidates answered this reasonably well with most of them concluding that he was working too many hours. Some went on to discussed whether this had continued to the maximum length of time.

(b)

There were some very good responses to this question. Some candidates clearly new the entitlement but did not apply so received fewer marks.

(c)

There were mixed responses to this question. Those scoring the higher marks identified the daily and weekly entitlement. Some candidates came to the wrong conclusion as to how many 20-minute breaks he was entitled to each day.

(d)

Overall, this question was answered well. It should be noted, as previously, stated the age ranges have changed.

Question 3(a)

Although generally, the responses were good, there are still a number of candidates confusing wrongful dismissal with unfair dismissal.

(b)

This is a straightforward question was generally answered well.

(c)

Some candidates did not discuss the basis of the claim for wrongful dismissal, that being the wrong notice entitlement. Instead, they started with the pool incident. Some candidates then discussed conduct under unfair dismissal which is not what the question asked. Candidates should start with the criteria to see if there was a claim for wrongful dismissal. The discussion should then consider whether the claim would succeed following the pool incident all based on the criteria for wrongful dismissal.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 – UNIT 6 – EMPLOYMENT LAW

SECTION A

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"> • Case law • Codes of practice • UK legislation • Regulations 	3
2	<ul style="list-style-type: none"> • If their employees have sensitive knowledge concerning their work/ contacts • It is an express term within a contract • Garden leave is a period where they do not continue to work • But they receive full pay and benefits • This is when they have had notice of their employment termination • By inserting this clause, the employer is able to protect their interests • It must be reasonable / protect legitimate business interests 	5
3	<ul style="list-style-type: none"> • Sickness, injury and sick pay • Pensions • Notice periods • Disciplinary and grievance procedures 	2
4	<ul style="list-style-type: none"> • S19 • If A applies to B a provision, criteria or practice • which is discriminatory in relation to; • A relevant protected characteristic of B's • Cannot be shown to be a proportionate means of achieving a legitimate aim 	4
5	<ul style="list-style-type: none"> • Possession of a particular characteristic is an occupational requirement • Being of a particular sex, marriage or sexual orientation is an occupational requirement • Workers with longer services receive enhanced benefits • Younger workers are paid less under the NMW Act • Higher redundancy payments for older workers 	3
6	<ul style="list-style-type: none"> • Contract is terminated by the employer (or example e,g redundancy/ compulsory retirements • A fixed- term/ limited term contract ends • There is constructive dismissal 	3
7	<ul style="list-style-type: none"> • It means to bring the contract to end • Has committed a fundamental breach / goes to the root of the contract • E.g Gross misconduct • e.g. Pepper v Webb 1969 	4

8	<ul style="list-style-type: none"> • It covers the actual loss suffered by the employee from being dismissed • Includes loss of earnings from dismissal to the trial • Estimation of losses whilst employee is looking for work • Other benefits / e.g pension contributions • Capped at lower of (£88,519 or 52 weeks' pay) 	4
9	<ul style="list-style-type: none"> • Applies to persons who propose to undergo, are undergoing or who have undergone gender reassignment. 	1
10	<ul style="list-style-type: none"> • Individuals are in a 'business on their own account'. 	1
Section A Total:		30 marks

Section B - Scenario 1

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> • S26 Equality Act 2010 • "A subjects B to unwanted conduct • because of a protected characteristic of B's • that has the effect of creating a humiliating, degrading, hostile, offensive or intimidating environment." 	4
1(b)	<ul style="list-style-type: none"> • Potential vicarious liability situation • Harassment situation • Unwanted conduct • The co-workers have created a hostile and intimidating environment by Calling him princess • Posting pictures on his locker • Of a sexual nature • As FCS has not done anything about this • Franz is likely to succeed 	6
Question 1 Total:		10 marks
2	<ul style="list-style-type: none"> • Greta's bad back is a physical impairment • It is substantial /More than trivial • Greta can no longer do what she could before • Standing / walking • Its long-term / permanent • She can no longer carry out normal day to day activities • lifting boxes is considered day to day activities • e.g Banaszcyk v Booker Ltd • Therefore, she meets the definition 	8
3(a)	<ul style="list-style-type: none"> • S20 the Equality Act 2010 • An employer will be required to make reasonable adjustments when compared to a non- disabled person • A a PCP of A's puts B at a disadvantage • If a physical feature puts B at a disadvantage • If B is put at substantial disadvantage but for the provision of an auxiliary aid 	5

3(b)	<ul style="list-style-type: none"> • How effective the change would be • The practicality of the adjustment • The cost of the adjustments • Taking into account the employer's financial resources 	3
3(c)	<ul style="list-style-type: none"> • Ed has a duty to consider reasonable adjustments • S15 the Equality Act 2010 • It would not be discrimination to treat a non-disabled person more favourably • e.g. Archibald v Fife Council 2004 • Greta could be transferred to the higher- grade job • Without the need for an aptitude test • The change would be effective • It is practical she works there and knows the warehouse • There could be cost as he could provide her with a mobility devise • Which would be an auxiliary aid. • Reasoned conclusion 	8
Question 3 Total:		16 marks
4	<ul style="list-style-type: none"> • Greta must write to KCS informing them of the grievance • KCS must: <ul style="list-style-type: none"> • then invite her to a meeting to discuss her grievance • permit her to be accompanied at the meeting • decide on the appropriate action to resolve the issue • notify Greta of the decision • allow her to appeal • write to her to inform of the outcome 	6
Question 4 Total:		6 marks
Scenario Total:		40 marks

Section B - Scenario 2

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"> • Burt's contract describes him as a consultant • Consultants are usually self- employed • However, following Autoclenz Ltd v Belcher and Others 2011 • The status in his contract of employment is not definitive • The courts will consider other factors • Here the following would make it likely he is an employee • The discount card • The length of service • The fact he is provided with a uniform • He does not select his own hours 	8
2	<ul style="list-style-type: none"> • Acas Code of Practice 1 • Anna must establish the facts and write to the employee explaining the problem • She must then invite Burt and Anna to separate meetings • They can be accompanied to the meeting • Anna must then decide and inform them of the appropriate action that will be taken • e.g written warning 	8

	<ul style="list-style-type: none"> • They are then given the opportunity to appeal • If possible, to a different manager • This may not be applicable here – Anna may be the only manager • They can be accompanied to the appeal meeting • The outcome will be provided in writing • Employer must act promptly and consistently throughout 	
3	<ul style="list-style-type: none"> • Burt meets the continuity of employment as he been employed for 3 years • He is an employee • He will need to bring a claim within 3 months of a dismissal • He needs to be dismissed • He has not yet been dismissed • Not eligible 	5
4(a)	<ul style="list-style-type: none"> • Investigation is part of the procedure for dismissal • Here this is the suspected authorised absences would be misconduct • British Home Stores v Burchell 1978 • Anna must believe he is guilty • Have reasonable grounds for that belief • She could not find him • She should have carried out as much investigation as was reasonable to form the belief the employee is guilty • Reasoned conclusion 	6
4(b)	<ul style="list-style-type: none"> • S98(2) ERA • Conduct / Misconduct • Here the misconduct is unauthorised absence • Usually, Anna would need to show a pattern of misconduct • She believes he has done it on more than one occasion • Reasoned conclusion 	4
Question 4 Total:		10 marks
5(a)	<ul style="list-style-type: none"> • Some other substantive reason • This covers reasons that do not fall within the other categories • Insulting a customer • has damaged the reputation of the hotel/ demanded her customer has demanded her money back • e.g. Treganowan v Robert Knee & Company Ltd 	4
5(b)	<ul style="list-style-type: none"> • S98(4) ERA 1996 • Substantive fairness considers whether an employee acted reasonably in the all the circumstances when dismissing • It will be decided in accordance with the principles of Equity and the substantial merits of the case • e.g HSBC BANK V MADDEN • Anna must have acted with the ‘band of reasonable responses’ that an employer may have used when dismissing for that reason2 	5
Question 5 Total:		9 marks
Scenario Total:		40 marks

Section B - Scenario 3

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"> • A mobility clause could have been included • This is an express term that • States that an employee could be required to work at a different location • Other than the one that the one they work at 	2
Question 1 Total:		2 marks
2(a)	<ul style="list-style-type: none"> • Oscar cannot be required to work more than 48 hours (1) • In a 7-day period • Unless he has signed an opt out • Working Time Regulations 1998 • E.g. Reg (4) • Here Oscar is working 72 hours per week. • This could be over the allowed hours if this has continued for 17 weeks or more. • Ali cannot force / pressurise him into signing the opt out 	7
2(b)	<ul style="list-style-type: none"> • There is no qualifying period, holiday accrues from the first year of employment. • 1/12 of the annual leave entitlement on the first day of each month • Oscar is also entitled to 5.6 weeks paid annual leave per year. • Capped at 28 days • This Includes the bank holidays. • Here his contractual amount is 30/ he is full time • This is a sufficient holiday allowance as it is above the statutory amount. 	6
2(c)	<ul style="list-style-type: none"> • Workers who work more than 6 hours per day are entitled to a 20-minute rest break. • Oscar receives a 20-minute rest break per day. • He is also entitled to a rest period of 11 hours' uninterrupted per day • He has 12 hours. • He is also entitled to one 24- hour period per week. • And it appears he also has one 24 -hour rest period per week Sunday off. • This is the correct entitlement. 	7
2(d)	<ul style="list-style-type: none"> • National Minimum Wage Act / living wage • Entitled the correct rate for his age range (23 and over) • He is 26 and should be paid £8.91 • He receives this than this/ they are in breach 	4
Question 2 Total:		24 marks
3(a)	<ul style="list-style-type: none"> • The employee has been summarily dismissed /with less/wrong notice than what they are entitled to. • No notice 	4

	<ul style="list-style-type: none"> • They have not received any PILON • And the employee has not justified the dismissal 	
3(b)	<ul style="list-style-type: none"> • Oscar was dismissed with less than 3 days' notice • His notice entitlement is the greater of his contractual or statutory entitlement. • S86 Employment Rights Act 1996 • Under ERA this would be 1 week's notice • He has not received the correct notice 	3
3(c)	<ul style="list-style-type: none"> • Oscar may have been entitled to claim wrongful dismissal as he has not received the correct notice • He was dismissed for being late to work • This may not amount to gross misconduct / fundamental breach • However, during his notice period he held an unauthorised pool party • This may constitute gross misconduct • Therefore would justify a summary dismissal • So Oscar will not be able to claim 	7
Question 3 Total:		14 marks
Scenario Total:		40 marks